

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
Texarkana Division

| | | |
|---------------------------|---|-----------------------------------|
| WIAV NETWORKS, LLC, | § | |
| Plaintiff, | § | |
| v. | § | |
| | § | Civil Action No. 5:09-cv-00101 DF |
| 3COM CORPORATION, et al., | § | |
| | § | |
| Defendants. | § | JURY TRIAL DEMANDED |

DEFENDANT UTSTARCOM, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant UTStarcom, Inc. ("UTStarcom"), by counsel, responds to the allegations of the Amended Complaint (the "Complaint") as follows:

NATURE OF THE ACTION

1. UTStarcom admits that U.S. Patent No. 6,480,497 (the "497 Patent") and U.S. Patent No. 5,400,338 (the "338 Patent") bear the titles "Method and Apparatus for Maximizing Data Throughput in a Packet Radio Mesh Network" and "Parasitic Adoption of Coordinate-Based Addressing by Roaming Node" on their respective cover pages. UTStarcom lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the Complaint and therefore denies them.

2. Paragraph 2 of the Complaint states conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, UTStarcom admits only that the Complaint purports to state a claim under the patent laws of the United States. UTStarcom denies all remaining allegations in Paragraph 2 to the extent they are directed to it. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 directed to other defendants and on that basis denies them.

3. Paragraph 3 of the Complaint states conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, UTStarcom admits only that the Complaint purports to state a claim under the patent laws of the United States .

THE PARTIES

4. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and on that basis denies them.

5. The allegations in Paragraph 5 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and on that basis denies them.

6. The allegations in Paragraph 6 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and on that basis denies them.

7. The allegations in Paragraph 7 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and on that basis denies them.

8. The allegations in Paragraph 8 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and on that basis denies them.

9. The allegations in Paragraph 9 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and on that basis denies them.

10. The allegations in Paragraph 10 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and on that basis denies them.

11. The allegations in Paragraph 11 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and on that basis denies them.

12. The allegations in Paragraph 12 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and on that basis denies them.

13. The allegations in Paragraph 13 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and on that basis denies them.

14. The allegations in Paragraph 14 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and on that basis denies them.

15. The allegations in Paragraph 15 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and on that basis denies them.

16. The allegations in Paragraph 16 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and on that basis denies them.

17. The allegations in Paragraph 17 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and on that basis denies them.

18. The allegations in Paragraph 18 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and on that basis denies them.

19. The allegations in Paragraph 19 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and on that basis denies them.

20. The allegations in Paragraph 20 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and on that basis denies them.

21. The allegations in Paragraph 21 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and on that basis denies them.

22. The allegations in Paragraph 22 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and on that basis denies them.

23. The allegations in Paragraph 23 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and on that basis denies them.

24. The allegations in Paragraph 24 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and on that basis denies them.

25. The allegations in Paragraph 25 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and on that basis denies them.

26. The allegations in Paragraph 26 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and on that basis denies them.

27. The allegations in Paragraph 27 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and on that basis denies them.

28. The allegations in Paragraph 28 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and on that basis denies them.

29. The allegations in Paragraph 29 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and on that basis denies them.

30. The allegations in Paragraph 30 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and on that basis denies them.

31. The allegations in Paragraph 31 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and on that basis denies them.

32. The allegations in Paragraph 32 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 and on that basis denies them.

33. The allegations in Paragraph 33 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 and on that basis denies them.

34. The allegations in Paragraph 34 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and on that basis denies them.

35. The allegations in Paragraph 35 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 and on that basis denies them.

36. UTStarcom admits the allegations in Paragraph 36 of the Complaint.

37. The allegations in Paragraph 37 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 and on that basis denies them.

38. The allegations in Paragraph 38 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 and on that basis denies them.

JURISDICTION AND VENUE

39. Paragraph 39 states conclusions of law and not an averment of fact to which an answer is required, but insofar as an answer may be deemed required, UTStarcom denies the allegations. UTStarcom also denies that it has committed any act of patent infringement as alleged in Paragraph 39 of the Complaint. UTStarcom admits that the Complaint purports to state a claim under the United States patent laws over which this Court has subject matter jurisdiction. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 directed to other defendants and on that basis denies them.

40. Paragraph 40 states conclusions of law and not an averment of fact to which an answer is required, but insofar as an answer may be deemed required, UTStarcom denies the allegations. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 directed to other defendants and on that basis denies them.

41. Paragraph 41 sets forth legal conclusions to which no response is required. UTStarcom denies that it has committed any acts of infringement. UTStarcom denies all remaining allegations in Paragraph 41 to the extent they are directed to it. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 directed to other defendants and on that basis denies them.

COUNT I

42. UTStarcom repeats and incorporates by reference its responses to each of the foregoing Paragraphs 1 through 41, above.

43. The asserted patent speaks for itself. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 43 and on that basis denies them.

44. The allegations in Paragraph 44 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and on that basis denies them.

45. The allegations in Paragraph 45 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 and on that basis denies them.

46. The allegations in Paragraph 46 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and on that basis denies them.

47. The allegations in Paragraph 47 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and on that basis denies them.

48. The allegations in Paragraph 48 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and on that basis denies them.

49. The allegations in Paragraph 49 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 and on that basis denies them.

50. The allegations in Paragraph 50 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and on that basis denies them.

51. The allegations in Paragraph 51 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and on that basis denies them.

52. The allegations in Paragraph 52 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and on that basis denies them.

53. The allegations in Paragraph 53 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and on that basis denies them.

54. The allegations in Paragraph 54 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and on that basis denies them.

55. The allegations in Paragraph 55 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 and on that basis denies them.

56. The allegations in Paragraph 56 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 and on that basis denies them.

57. The allegations in Paragraph 57 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and on that basis denies them.

58. The allegations in Paragraph 58 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and on that basis denies them.

59. The allegations in Paragraph 59 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and on that basis denies them.

60. The allegations in Paragraph 60 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 and on that basis denies them.

61. The allegations in Paragraph 61 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 and on that basis denies them.

62. The allegations in Paragraph 62 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 and on that basis denies them.

63. The allegations in Paragraph 63 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 and on that basis denies them.

64. The allegations in Paragraph 64 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 and on that basis denies them.

65. The allegations in Paragraph 65 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65 and on that basis denies them.

66. The allegations in Paragraph 66 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 and on that basis denies them.

67. The allegations in Paragraph 67 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 and on that basis denies them.

68. The allegations in Paragraph 68 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 and on that basis denies them.

69. The allegations in Paragraph 69 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 and on that basis denies them.

70. The allegations in Paragraph 70 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 and on that basis denies them.

71. The allegations in Paragraph 71 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 and on that basis denies them.

72. The allegations in Paragraph 72 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 and on that basis denies them.

73. The allegations in Paragraph 73 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73 and on that basis denies them.

74. The allegations in Paragraph 74 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 and on that basis denies them.

75. UTStarcom admits only that it has imported, made, used, offered for sale, and sold wireless communications devices, including the F1000G and F30000. UTStarcom denies the remaining allegations in Paragraph 75 of the Complaint.

76. The allegations in Paragraph 76 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76 and on that basis denies them.

77. The allegations in Paragraph 77 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77 and on that basis denies them.

COUNT II

78. UTStarcom repeats and incorporates by reference its responses to each of the foregoing Paragraphs 1 through 77, above.

79. The asserted patent speaks for itself. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 79 and on that basis denies them.

80. The allegations in Paragraph 80 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80 and on that basis denies them.

81. The allegations in Paragraph 81 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81 and on that basis denies them.

82. The allegations in Paragraph 82 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 and on that basis denies them.

83. The allegations in Paragraph 83 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83 and on that basis denies them.

84. The allegations in Paragraph 84 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84 and on that basis denies them.

85. The allegations in Paragraph 85 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85 and on that basis denies them.

86. The allegations in Paragraph 86 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86 and on that basis denies them.

87. The allegations in Paragraph 87 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87 and on that basis denies them.

88. The allegations in Paragraph 88 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 88 and on that basis denies them.

89. The allegations in Paragraph 89 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89 and on that basis denies them.

90. The allegations in Paragraph 90 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90 and on that basis denies them.

91. The allegations in Paragraph 91 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 91 and on that basis denies them.

92. The allegations in Paragraph 92 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 92 and on that basis denies them.

93. The allegations in Paragraph 93 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 93 and on that basis denies them.

94. The allegations in Paragraph 94 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94 and on that basis denies them.

95. The allegations in Paragraph 95 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 95 and on that basis denies them.

96. The allegations in Paragraph 96 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 96 and on that basis denies them.

97. The allegations in Paragraph 97 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 97 and on that basis denies them.

98. The allegations in Paragraph 98 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98 and on that basis denies them.

99. The allegations in Paragraph 99 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 99 and on that basis denies them.

100. The allegations in Paragraph 100 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 100 and on that basis denies them.

101. The allegations in Paragraph 101 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 101 and on that basis denies them.

102. The allegations in Paragraph 102 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 102 and on that basis denies them.

103. The allegations in Paragraph 103 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 103 and on that basis denies them.

104. The allegations in Paragraph 104 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 104 and on that basis denies them.

105. The allegations in Paragraph 105 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 105 and on that basis denies them.

106. The allegations in Paragraph 106 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 106 and on that basis denies them.

107. The allegations in Paragraph 107 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107 and on that basis denies them.

108. The allegations in Paragraph 108 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 108 and on that basis denies them.

109. The allegations in Paragraph 109 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109 and on that basis denies them.

110. The allegations in Paragraph 110 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110 and on that basis denies them.

111. UTStarcom admits only that it has imported, made, used, offered for sale, and sold wireless communications devices, including the F1000G and F30000. UTStarcom denies the remaining allegations in Paragraph 111 of the Complaint.

112. The allegations in Paragraph 112 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112 and on that basis denies them.

113. The allegations in Paragraph 113 are not directed to UTStarcom. UTStarcom is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 113 and on that basis denies them.

114. To the extent any allegations of the Compliant are not specifically addressed above, they are denied.

AFFIRMATIVE DEFENSES

115. UTStarcom has not infringed and is not infringing, directly or indirectly, literally or under the doctrine of equivalents, any of the patents asserted in the Complaint.

116. Wiav is not entitled to injunctive relief because it has an adequate remedy at law.

117. Wiav's requests for treble damages, a finding of willful infringement and a finding that this is an exceptional case fail to state a claim for which relief can be granted because Wiav has failed to plead required facts.

118. Wiav's requests for treble damages, a finding of willful infringement and a finding that this is an exceptional case are barred because UTStarcom did not act with objective recklessness.

119. Wiav's request for relief is or may be limited by 35 U.S.C. §§ 286 and/or 287.

JURY DEMAND

120. In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, UTStarcom requests a trial by jury.

PRAYER FOR RELIEF

121. UTStarcom denies that Wiav is entitled to the relief sought or to any relief as against UTStarcom.

WHEREFORE, UTStarcom, Inc. prays for relief as follows:

A. That this Court adjudge and decree that UTStarcom has not infringed and does not infringe, directly or indirectly, any valid, enforceable claims of any of the patents asserted in the Complaint.

B. That the Court find this case exceptional and order Wiav to pay UTStarcom's costs of this action, including reasonable attorneys' fees and litigation expenses, pursuant to 35 U.S.C. § 285 and/or as otherwise permitted by law.

C. That this Court award UTStarcom such further relief as the Court deems just and appropriate.

DATE: October 26, 2009

Respectfully submitted,

/s/ M.F. Connell Mullins (by Collin Maloney with permission)

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ATTORNEYS FOR DEFENDANT

UTSTARCOM, INC.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically on the 26th day of October, 2009, in accordance with Local Rule CV-5(a) and has been served electronically on all counsel who have consented to electronic service.

/s/ Collin Maloney